


grounds by statute, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

In his objections, Defendant rehashes much of the same argument raised in his summary judgment briefing, but presents no new summary judgment evidence to help resolve the genuine issue of material fact found by the Magistrate Judge. The Magistrate Judge specifically pointed out that Defendant failed to prove when Plaintiff received the Step 1 grievance response and at what unit Plaintiff was housed when the response was returned to him. Docket No. 24 at 7. Plaintiff asserted that he was at the Beto Unit when he filed his Step 2 grievance, and that Grievance Investigator Harris intercepted his grievance and effectively prevented him from exhausting his administrative remedies. Docket No. 19; *see Ross v. Blake*, 578 U.S.632, 644 (2016) (holding that a remedy may be unavailable “when prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation.”). As prison officials “must establish beyond peradventure all of the essential elements of the defense of exhaustion,” Defendant bears the burden of proof and persuasion on this issue. *Dillon v. Rogers*, 596 F.3d 260, 266 (5th Cir. 2010). Because of the disputed fact question, Defendant has failed to meet it.

Having conducted a de novo review of the record in this case and the Magistrate Judge’s Report, the Court has determined that the Report of the Magistrate Judge is correct, and Defendant’s objections are without merit. Accordingly, the Court hereby **ADOPTS** the Report of the Magistrate Judge (Docket

No. 24) as the opinion of the District Court. The Court **DENIES** Defendant Holman's summary judgment motion (Docket No. 11) without prejudice to reconsideration based on additional evidence. Plaintiff's excessive use of force claim shall proceed on the docket.

So **ORDERED** and **SIGNED** this 8th day of **March, 2023**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE